



CHIEF JUSTICE'S RULES ADVISORY COMMISSION MINUTES OF MEETING

January 10, 2020

North Carolina Judicial Center, Room A1101
901 Corporate Center Drive
Raleigh, NC 27607

Call to Order

A meeting of the Chief Justice's Rules Advisory Commission was called to order at 1:30 p.m. on Friday, January 10, 2020, in the Executive Boardroom at the Judicial Center by North Carolina Court of Appeals Judge Donna Stroud, Commission Chair.

Commission Members in Attendance:

Trey Allen, *Associate Professor*, UNC School of Government
Ann Anderson, *Associate Professor*, UNC School of Government
Mark Anderson, *Partner*, McGuireWoods LLP
Pamela Hill, *Clerk of Superior Court*, Randolph County
Mark Holt, *Partner*, Holt Sherlin LLP
Mike Mitchell, *Attorney*, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
Kellie Myers, *Trial Court Administrator*, Wake County
Paul Ridgeway, *Senior Resident Superior Court Judge*, Wake County
Andrew Tripp, *Chief of Staff*, Office of Senate President Pro Tempore Phil Berger
Christine Walczyk, *District Court Judge*, Wake County

Commission Members in Attendance by Phone:

John Rabiej, former *Deputy Director*, Bolch Judicial Institute, Duke University School of Law

Other Attendees:

Rebecca Stevens, *Research Assistant to Representative Sarah Stevens*, North Carolina House of Representatives
Andrew Simpson, *Chief Counsel for Policy and Intergovernmental Affairs*, North Carolina Administrative Office of the Courts
Emily Mehta, *Research and Policy Associate*, North Carolina Administrative Office of the Courts
Grant Buckner, *Administrative Counsel*, Supreme Court of North Carolina



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Seth Ascher, *Assistant Administrative Counsel*, Supreme Court of North Carolina
Betse Hamilton, *Office Administrator*, Supreme Court of North Carolina
Ashley Stewart, *Law Student*, Elon University School of Law
Sam Nesbit, *Law Student*, Campbell University School of Law

Approval of Minutes

The minutes from the November 15, 2019 meeting were approved, as written.

Old Business

Update on Registration of Pro Se Filers and Two-Step Verification in *Odyssey*

Andrew Simpson and Emily Mehta provided a report on the registration fields in *Odyssey*, the statewide electronic-filing and case-management system being implemented by the North Carolina Administrative Office of the Courts (NCAOC). Specifically, differences between "Guide & File," the pro se platform, and "File & Serve," the attorney platform, were discussed. Mr. Simpson indicated that two-step verification is a feature of File & Serve, but not Guide & File. Mr. Simpson reported that pro se users of Guide & File will have to provide valid credit card credentials in order to file a document, unless the filing fee is waived. Ms. Mehta reported that the registration fields in *Odyssey* may not be altered.

Discussion ensued concerning the security procedures and type of identification that must be submitted to electronically file pro se, as mandated in North Carolina Session Law 2019-243.

Mark Anderson, General Rules of Practice subcommittee chair, and Judge Christine Walczyk suggested that the rules should simply state that pro se filers must submit an acceptable form of identification and not get into specifics concerning the type of identification that is required. John Rabiej stated that the rules could achieve this result by indicating no more than "you have to use the court's electronic-filing system."

Update on Unsworn Declarations Under Penalty of Perjury

The topic of unsworn declarations under penalty of perjury was tabled until the next meeting.

Rules of Civil Procedure Subcommittee Report

Ann Anderson, subcommittee member, provided the Commission with the attached Rules of Civil Procedure comparison chart. Professor Anderson indicated that the language of Rule 3 needs to clearly indicate that a civil action commences at the time the complaint is electronically filed.

It is not yet known whether a summons can be issued automatically when a complaint is filed using *Odyssey*.

Grant Buckner will determine the process for sharing proposed rule changes with the Supreme Court.

General Rules of Practice Subcommittee Report

Mark Anderson walked the Commission through a preliminary draft of a revised Rule 5, "Form of Pleadings." (This draft was not available to the Commission members at the meeting, but is now attached, with slight modification.)

Andrew Tripp proposed that the deadline for filing on a given day be 11:59 p.m., not 5:00 p.m. An 11:59 p.m. deadline coincides with the federal e-filing rules.

Discussion ensued as to whether a rule should be considered that would allow some attorneys to opt out of e-filing. It was noted that other e-filing jurisdictions do not have an "opt-out" provision.

New Business

Revisions to Supplemental Rules of Practice and Procedure for the North Carolina e-Filing Pilot Project

The Second Supplemental Rules of Practice and Procedure for the North Carolina e-Filing Pilot Project were last amended by the Supreme Court on August 27, 2013 (*see* 366 N.C. 618–28). The content of these rules will need to be considered for incorporation into the General Rules of Practice as the Commission proceeds.

Discussion of Plan for Report to Joint Legislative Oversight Committee

Session Law 2019-243 requires the NCAOC to report the rules promulgated under N.C.G.S. § 7A-49.5(b1) to the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2020. The Commission reached a consensus that as much progress as possible should be made toward the promulgation of new rules before the deadline. If rules are not promulgated by the Supreme Court before the deadline, the Commission agreed that the report should outline the progress that has been made toward that end. Andrew Simpson proposed, and Andrew Tripp concurred, that the Commission and the NCAOC keep an open line of communication with the legislature on this issue.

Website for Commission

A website for the Commission has been completed and is now live at:

<https://www.nccourts.gov/commissions/chief-justices-rules-advisory-commission>

Prior to the start of the meeting, a photo of Commission members (except for John Rabiej, who was not able to be present) was taken for inclusion on the website.

Next Steps and Schedule for Upcoming Commission Meetings

Proposed edits to Rules 3 and 5 of the Rules of Civil Procedure and to Rule 5 of the General Rules of Practice should be submitted to the appropriate subcommittee chair no later than Wednesday, January 15, 2020.

Andrew Simpson will invite a representative from Tyler Technologies to be present at the February Commission meeting in order to answer questions from Commission members.

Upcoming Commission Meetings

Friday, February 7, 2020 1:30 p.m. – 4:30 p.m.

Friday, March 20, 2020 1:30 p.m. – 4:30 p.m.

Both meetings will be held at the Judicial Center in the Executive Boardroom, Room A1101.

Adjournment

The meeting was adjourned at 4:30 p.m. by Judge Stroud.

Minutes submitted by: /s/ Grant E. Buckner
Administrative Counsel, Supreme Court of North Carolina

Date: January 28, 2020